

**WILSON PHILIP SAGEVAKA V. M.S.L IMPORT AND EXPORT CO. LTD AND DAVID MAURE**

**High Court of Solomon Islands  
(Palmer ACJ)**

**Civil Case No. 73 of 2002**

**Hearing: 8<sup>th</sup> April 2002  
Judgment: 12<sup>th</sup> April 2002**

*G. Suri for the Applicant/Plaintiff  
Sol-Law (J. Katabanas) for the First Respondent/First Defendant  
Second Respondent/Second Defendant not present and not represented*

**Palmer ACJ:** Plaintiff filed Writ of Summons and Statement of Claim on 19<sup>th</sup> March 2002. He claims to be the tribal chief of the Sinagi Clan of Kia in Isabel Island, and asserts ownership rights over the whole of Barora Ite Island. He has prosecuted or has had claims prosecuted against the second Defendant (David Maure) pursuant to the Local Courts Act (Cap. 19) in respect of the Eastern and Western parts of Barora Ite Island only (see Exhibit "BZ1" annexed to the affidavit of Brownless Zaku filed 20 March 2002) and has succeeded in obtaining title. At paragraph 3 of page 1 of the judgement of the Isabel Local Court in Land Case Number 2/2000 delivered on 29 May 2001, the Local Court made clear the area over which the dispute was being determined:

*"The whole island of Barora Ite had never gone through a chiefs hearing except for East Barora which is from Vedekeo to Borubeana and the west Barora Ite, which is from Sole to Matavagi." (Emphasis added)*

The Local Court held in its determination dated 29<sup>th</sup> May 2001, that East Barora Ite stretching from Vedekeo to Venao Bay, was owned by Wilson Sagevaka ("Sagevaka") whilst West Barora Ite from Sele to Rerekaharo to Matavagi plus the adjacent islands, belonged to David Maure ("Maure"). On appeal, (LAC NO. 2 of 2001) the Isabel Customary Land Appeal Court ("Isabel CLAC") overturned the decision of the Local Court and substituted its decision as follows:

*"The Local Court decision is substituted with the order that ownership of the land from Kulo to Marrisa and thence across the Barora Ite Island and including Gizunalapu Island is awarded to the Appellant and his tribe."*

I am not familiar with the boundaries of Barora Ite Island but in overturning the decision of the Isabel Local Court, the Isabel CLAC can only effectively rule on the area referred initially to the chiefs and no more. Anything beyond that would be ultra vires. The decision of the Isabel CLAC thus gave title of ownership over East and West Barora Ite Island to Sagevaka. I am not aware of any appeal having been made to the High Court in respect of that decision. To that extent, ownership rights over East and West Barora Ite Island as between Sagevaka and Maure have been conclusively determined.

The central part of Barora Ite Island stretching from Rerekaharo Bay to Kudokadolo to Venao and Horagano (hereinafter referred to as "Central Barora Ite") on the other hand has yet to be finally litigated. Maure has referred a dispute with Sagevaka over Central Barora Ite ("CBI") to the Chiefs under the Local Courts Act but it appears a hearing is yet to be convened or if already convened no decision as yet has been given (see affidavit of David Maure filed 28<sup>th</sup> August 2001 in CC 66 of 2001 and Exhibit "DM2" annexed to that affidavit). At this point of time therefore Sagevaka can only claim ownership rights as against Maure over CBI, which are yet to be tested under the Local Courts Act.

There is however another group of landowners represented by Ofonjel Vato Tabo, Obed Alemaena, Luke Eta and Peter Mcpherson (hereinafter referred to as "Tabo and others") also claiming ownership rights over CBI. It is with this third group of land representatives/trustees that MSL Import and Export Co. Ltd

(hereinafter referred to as "MSL") entered into a timber rights agreement (now declared void in the judgement delivered on 23<sup>rd</sup> November 2001 in CC 66 of 2001) and which it relied on for its timber licence (also now declared void in the same judgment). So what we have at this point of time are three different groups of landowners each asserting ownership rights over CBI. Those rights however are all yet to be tested *inter partes* pursuant to the Local Courts Act. If at the end of the day, Tabo and Others should win their case against Maure and Sagevaka, MSL will have a lifeline thrown to it regarding its operations on CBI. On the other hand, if Maure or Sagevaka should turn out to be the ultimate owners of CBI, then they can simply continue on with their claims of trespass and conversion against MSL.

As regarding MSL's position at this point of time, there is virtually little defence it can raise against the claims of trespass other than the fact that reliance was placed erroneously on what it thought was a valid timber rights agreement entered into with Tabo and Others and a valid timber licence issued pursuant to that agreement. The fact however remains, that it does not have any valid timber rights agreement or timber licence and therefore is a trespasser per se.

It has been submitted by Mr. Katahanas that Sagevaka does not have a cause of action as against MSL. With respect, that is only partially correct. At this point of time, Sagevaka claims rights over CBI, which are yet to be determined as opposed to Maure and Tabo and Others. None of these three groups of landowners can demonstrate a better title at this point of time. Sagevaka's claims of ownership therefore cannot simply be discarded as mere assertions. He has demonstrated that his claim of ownership over CBI cannot be taken lightly especially when he has already won a legal battle over East and West Barora with Maure. The possibility that he may also turn out to be the owner of CBI cannot be described as remote. The only way to finally test his claim is for the three landowners to complete their disputes under the Local Courts Act. Only then will it become clear who has title over CBI. To that extent he has demonstrated there are serious issues before this court, which must be addressed and which can ground possible claim for interim restraining orders as against MSL but more particularly over the proceeds of the logs felled and exported from CBI. MSL's position will stand or fall on the success of the claims of ownership of Tabo and Others. I am satisfied he has standing to apply for possible restraining orders in respect of those proceeds.

Should the proceeds of the logs exported from CBI be restrained *in toto*? Whilst I recognize the company is not entitled to the proceeds of the logs per se as a trespasser it cannot be denied that without the part played by it in having the logs felled, removed and exported, they could not be converted to cash. The time, money, expertise and costs expended in such operations is quite substantial. That of-course does not excuse this company or any other company for that matter, from its responsibility in ensuring that it complies with all relevant procedures under the Forest Resources and Timber Utilisation Act (Cap. 40) and takes no short cuts. Because failure to adhere as has happened in this case could have dire consequences in terms of damages and costs.

The application of the Plaintiff seeking to restrain the FOB proceeds of the logs sold is akin to an application for interim attachment of property. It is premised on the submission that MSL may not be able to meet any liability it might incur in the event the Plaintiff wins title over CBI. The main thrust behind this submission, which can be gleaned from submissions of learned Counsel for the Plaintiff, is that MSL does not have any valid timber rights or licence to fell trees and therefore at the end of the day depending on which landowners win the land ownership dispute over CBI, MSL may be liable to pay damages for trespass and or conversion of those logs. Though it must be borne in mind that this came about only after the orders of this Court issued in its judgment of 23<sup>rd</sup> November 2001, had declared them to be invalid. The logs however had been felled prior to that in reliance on what MSL thought was a valid licence.

In order for such application to succeed good cause must be shown. In *Joseph Alevi Malanga & Others v. Omex Ltd CAC 2 of 2001, 25<sup>th</sup> October 2001*, (cited by learned Counsel for the first Defendant) the Court of Appeal refused orders for security on the ground that good or sufficient cause was not shown before the primary judge. Has good cause been shown in this case? The answer in my respectful view must be no. Whilst it is acknowledged the company does not have a valid timber rights or licence, it has not been shown that the company will not be able to meet the claims of the Plaintiff for damages for trespass and or conversion. The company is a locally incorporated company with directors who reside and operate in the

country. There is no evidence to suggest that the company would not be able to meet any liability in the event the Plaintiff is awarded ownership of CBI at the end of the day.

In his submissions before this court regarding the release of SBD75,000-00 from the restrained funds in CC 66 of 2001, Mr. Katahanas points out that at no time did MSL consent to the release of the said funds. Counsel acting for MSL in that case was Mr. Tegavota. This raises serious allegation against Mr. Tegavota as to how and why he could have consented to the release of those funds without his client's knowledge and instruction. I note a consent order was signed before the Registrar of High Court on 30<sup>th</sup> November 2001. **Accordingly I would direct the Registrar of High Court to investigate this allegation and file a report for my consideration before deciding on what further action can be taken.**

Having considered all matters raised before me, I am satisfied the following orders should be made. The restraining orders imposed in CC 66 of 2001 regarding 20% of the gross proceeds of logs exported from CBI should continue. However, on top of that the sum of SBD75,000-00 should also be added to the restrained funds. It should be borne in mind that if at the end of the day Sagevaka should win his case against Maure and Tabo and Others, Maure and whoever else collected the SBD45,000-00 and SBD30,000-00 respectively **might** be obliged to repay the same. At this point of time I do not know who gave instructions to Mr. Tegavota to release the SBD30,000-00 but if the identity of those persons may not be forthcoming, then Mr. Tegavota himself may have to be responsible for that amount.

Let me make clear to avoid any confusion that the remainder of the proceeds of the logs exported is to cater for Government duties, taxes and any other levies and expenses incurred connected to the felling, removal, transportation and export of all these logs. Further, I do not expect any exemptions to be made in respect of all logs exported from CBI.

The current signatories to the IBD account in CC 66 of 2001 should now be revoked and replaced with the names of Solicitors for the parties in this case. Civil Case 66 of 2001 should also be consolidated with this case. I grant the orders sought in paragraphs (2) and (3) of the Amended Summons filed 5<sup>th</sup> April 2002 details to be filed within 14 days, and costs in the cause.

#### **Orders of the Court:**

1. **Refuse paragraph 1 of the order sought in the Amended Summons filed 5 April 2002 save for 20% of the full FOB proceeds of logs exported from CBI and SBD75,000.00.**
2. **Revoke signatories to the current IBD account in CC 66 of 2001 forthwith and replace with the names of the Solicitors to the parties in this case.**
3. **Grant orders sought in paragraphs (2) and (3) of the Amended Summons filed 5<sup>th</sup> April 2002, details to be filed within 14 days.**
4. **Consolidate file CC 66 of 2001 and CC 73 of 2002.**
5. **Costs in the cause.**

**THE COURT.**